

The 30th October, 1970

No. 9297-I-Lab-70/31327.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Usha Spinning and Weaving Mills Ltd., Faridabad.

**BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.**

Reference No. 35 of 1970

between

**THE WORKMEN AND THE MANAGEMENT OF M/S USHA SPINNING AND WEAVING
MILLS, LTD., FARIDABAD**

Present :—

Shri Darshan Singh, for the workmen.

Dr. Anand Parkash, for the management.

AWARD

The workmen and the management of M/s Usha Spinning and Weaving Mills Ltd; Faridabad arrived at an agreement dated 31st October, 1969 under section 12(3) of the Industrial Disputes Act and a doubt arose regarding the interpretation of clause 5 of the said agreement. Accordingly the Governor of Haryana in exercise of the powers conferred by section 36A of the Industrial Disputes Act referred the following matter to this Tribunal for clarification,—*vide* Gazette Notification No. ID/FD/5132, dated 24th February, 1970.

What is the consumer's Prize Index series to which the rate of D. A. neutralisation was linked in the settlement dated 4th November, 1966?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workmen. The management in their written statement pleaded that apart from the agreement dated 4th November, 1966 referred to in the order of reference there was another agreement dated 30th October, 1967 which was also relevant for the purpose of deciding the present reference. The workmen denied the very existence of the agreement dated 30th October, 1970 and the following issues were framed.

1. Whether there was an agreement dated 30th October, 1967 between the parties and if so, what is effect?
2. What is the consumer's Prize Index series to which the rate of D. A. neutralisation was linked in the settlement, dated 4th November, 1966?

The case was adjourned for evidence to 23rd July, 1970. Before the evidence could be recorded the Government by Notification No. ID/FD/18738, dated 19th June, 1970 was pleased to amend the original order of reference and the words "and the settlement dated 30th October, 1967", were added after the words "linked in the settlement dated 4th November, 1966".

In view of this notification issue No. 2 was amended as under :—

"What is the consumer's Price Index series to which the rate of D. A. neutralisation was linked in the settlement, dated 4th November, 1966 and the settlement dated 30th October, 1967.

The words under laid in Issue No. 2 were added in view of the amendment made by the State Government in the order of reference. The workmen felt aggrieved by reason of the amendment and made an application that the issue could not be amended because there was no agreement between the parties, dated 30th October, 1967 and further the workmen have not been given any chance to file any objections before the issue was amended. It is further alleged that the notification of the Government by which the original order of reference has been amended is not in accordance with law and is ultra vires of the powers of the Government. This application is opposed on behalf of the management. It is pleaded that issue No. 2 has been rightly amended in the light of the terms of reference and in view of the amendment in the order of reference, it is now no longer open to the workmen to deny the existence, of the agreement dated 30th October, 1967 and so issue No. 1 has become superfluous. It is pleaded that Government was fully authorised to amend the order of reference and the amendment has been made in accordance with law. It is also pleaded that this Tribunal has no jurisdiction to go into the validity of the order of reference.

The management have filed a copy of the settlement dated 30th October, 1967 as also of the original settlement dated 4th November, 1966 and I have heard the arguments of the learned representative of the parties on the question with regard to the validity of the amendment made by the Government in the order of reference as also with regard to the Jurisdiction of this Tribunal to decide the question as to whether the Government did or did not possess the right to make the amendment. The learned representative of the workmen has stated that a singular number is used in section 36-A of the Industrial Disputes Act and the Government is not competent to make a reference under section 36 A of said act with regard to more than one award or settlement. This objections does not appear to have much force. If there are two settlement between the parties and there is a difficulty or doubt with regard to the interpretation of any of the provisions in both the settlement than in my opinion the Government may instead of making separate reference make a joint reference. The learned representative of the workmen has however rightly submitted that under section 36 A of the Industrial Disputes Act, the State Government can only make a reference to the Labour Court, Tribunal or National Tribunal if any difficulty or doubt arises as to the Interpretation of any provision of an award or settlement. The order of reference in the present case reads as under:—

"Whereas an agreement was arrived at between the management of M/s Usha Spinning and Weaving Mills Ltd; Faridabad and its workmen under section 12(3) of the Industrial Disputes Act on 31st October, 1969.

And whereas a doubt has arisen regarding interpretation of clause 5 of the said agreement.

Now, therefore, in exercise of the powers conferred by section 36A of the Industrial Disputes Act, the Governor of Haryana hereby refers the matter to the Industrial Tribunal, Haryana, Faridabad for clarification :—

What is the consumer's Price Index series to which the rate of D.A. neutralisation was linked in the settlement, dated 4th November, 1966.

Thus we see that in the present reference the only question for decision can be with regard to the interpretation, which is to be put on clause 5 of the agreement dated 31st October, 1969.

There may be dispute between the parties as to what should be the Consumer Price Index Series to which the rate of Dearness Allowance neutralisation is to be linked in accordance with the alleged settlement dated 30th October, 1967 but it is not clear how this dispute can be resolved in the present reference because as already pointed out this reference has been made under section 36 A of the Industrial Disputes Act because in the opinion of the State Government a doubt has arisen regarding the interpretation to be put on clause 5 of the agreement, dated 31st October, 1969. and in which there is a reference to the settlement dated 4th November, 1966. only and not to the settlement, dated 30th October, 1967. It is therefore not clear how the dispute if any between the parties with regard to consumer price index series to which the rate of dearness allowance neutralisation should be linked in light of the settlement dated 30th October, 1967 can be resolved in this case. In my opinion the limited question which this Tribunal can decide in the present references is as to how clause 5 of the settlement dated 31st October, 1969, is to be interpreted and the reference to any other point in the present reference would be beyond the powers of the Government. In case the present reference had been under section 10 of the Industrial Disputes Act then the matter would have been entirely different and any existing or apprehended dispute between the parties could have been referred to this Tribunal for adjudication but the scope of a reference under section 36 A of the Industrial Disputes Act is very limited. In a reference under section 36A only a difficulty or doubt as to the interpretation of any provisions of an award or a settlement can be resolved. I, therefore, hold that the Notification No. ID/FD/18738-40, dated 19th June, 1970 by which the order of present reference has been amended is not in accordance with law. I give my interim award accordingly. No order as to cost.

Dated the 9th October, 1970.

P. N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. TP/15, dated 20th September, 1970.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 9th October, 1970.

P. N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.